

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WINSTON GRESOV,

Defendant.

Civil Action No. 05-1204

CONSENT DECREE

I. BACKGROUND

1. The Grand Mogul and Mogul Mines (collectively the "Site") are located in the Cement Creek basin in San Juan County of southwestern Colorado. The two mines are situated on either side of the Cement Creek in the Ross Basin and metal-laden discharges from the two mines flow into Cement Creek, a tributary of the Animas River. Upon information and belief, Standard Metals Corporation operated the Mogul and Grand Mogul mines from approximately 1959 to 1964. From February 1997 to at least August 1998, Winston Gresov was the Chief Executive Officer, Vice-President, Chairman of the Board and the Director of Standard Metals Corporation.

2. On February 8, 2001, the Bureau of Land Management (BLM) of the Department of the Interior and the Environmental Protection Agency (EPA) sent Winston Gresov a “General Notice Letter and Request for Information” pursuant to CERCLA § 104(e) (“Information Request”) seeking information related to the identification, nature, and quantity

of materials which have been or are generated, treated, stored, or disposed of at the Site or transported to the Site and the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from the Site. The letter required a response within thirty days of receipt. Mr. Gresov received the letter on February 11, 2001. Mr. Gresov did not provide a response to this request. On August 31, 2001, BLM sent another letter to Winston Gresov requesting that Mr. Gresov respond to the February 8, 2001 information request. Mr. Gresov did not provide a response to this letter.

3. On April 8, 2004, BLM and EPA sent Winston Gresov a Second Information Request pursuant to CERCLA § 104(e). The letter requested a response within thirty days of receipt. Mr. Gresov received the letter on April 11, 2004. Mr. Gresov did not provide a response to this request.

4. BLM and EPA sent the foregoing Information Requests to Winston Gresov under the authority of CERCLA § 104(e) to acquire information about the identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at the Site or transported to the Site and the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from the Site. This information would assist in the assessment of Standard Metal Corporation's potential liability under CERCLA § 107 in connection with the Site.

5. This civil action was commenced by complaint on March 15, 2005. The civil action was brought pursuant to Section 104(e)(5)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund

Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9604(e)(5)(B), for the failure of Defendant, Winston Gresov, to provide information requested by BLM and EPA concerning the release and threat of release of hazardous substances into the environment at or from a site known as Mogul and Grand Mogul Mines located in San Juan County, Colorado.

6. In the complaint, the United States sought (a) an injunction ordering the Defendant to provide the information requested by BLM and EPA; and (b) civil penalties of up to \$32,500 per day for Defendant's failure to comply with BLM's and EPA's duly authorized request for information.

7. On May 19, 2005, Defendant Gresov provided a response to BLM's and EPA's information request concerning the release and threat of release of hazardous substances into the environment at or from the site known as Mogul and Grand Mogul Mines. After reviewing this information, the United States requested access to other documents available at Defendant Gresov's residence.

8. On July 21, 2005, the United States sent a letter to Defendant Gresov requesting financial information from Defendant Gresov to assess an appropriate penalty to settle the case.

9. On August 1, 2005, the United States reviewed the remaining documents of Defendant Gresov related to the release and threat of release of hazardous substances into the environment at or from the site known as Mogul and Grand Mogul Mines.

10. During the week of September 12, 2005, the United States received financial information from Defendant Gresov. The United States received additional financial information from Mr. Gresov on October 26, 2005 and November 18, 2005. The United States

has considered this information in its determination of the payments required by Section VI (Civil Penalties) in this Consent Decree.

11. Nothing in this Consent Decree constitutes an admission by the United States that Mr. Gresov's response to the Information Requests is true, accurate or complete or in full compliance with the Information Requests or Section 104(e) of CERCLA.

12. The United States and Mr. Gresov (the "Parties") agree, and this Court by entering this Consent Decree finds that the Consent Decree has been negotiated by the Parties in good faith, that settlement of this action will avoid future litigation and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION

13. This Court has jurisdiction over the subject matter of this action and the Defendant pursuant to Sections 104(e) and 113(b) of CERCLA, 42 U.S.C. §§ 9604(e) and 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1355, and has personal jurisdiction over Mr. Gresov.

14. Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 118(a) and 1391, because the Defendant resides in this district.

III. PARTIES BOUND

15. This Consent Decree is binding upon the United States and Mr. Gresov. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter Mr. Gresov's status or responsibilities under this Consent Decree.

IV. DEFINITIONS

16. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

A. "BLM" shall mean the United States Bureau of Land Management, a part of the United States Department of the Interior, and any successor departments or agencies.

B. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675(c).

C. "Consent Decree" means this Consent Decree.

D. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

E. "EPA" means the United States Environmental Protection Agency, an agency of the United States, and any successor departments or agencies.

F. "Financial Information" shall mean the Financial Information provided by Mr. Gresov the week of September 12, 2005, on October 26, 2005 and November 18, 2005 to the United States.

G. "Information Request" means the information requests dated February 8, 2001 and April 8, 2004, issued by BLM and EPA to Defendant, pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e).

H. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

I. "Gresov" or "Mr. Gresov" shall mean Winston Gresov who a resident of Pennsylvania and whose current address is 768 College Ave., Haverford, PA 19041.

J. "Paragraph" means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

K. "Parties" means the parties to this Consent Decree, *i.e.*, the United States and Mr. Gresov.

L. "Settling Defendant" means Mr. Gresov.

M. "Site" means the Grand Mogul and Mogul Mines located in the Cement Creek basin in San Juan County of southwestern Colorado. The two mines are situated on either side of Cement Creek in the Ross Basin and discharges from the two mines flow into Cement Creek, a tributary of the Animas River.

N. "United States" means the United States of America, including all of its departments, agencies and instrumentalities.

V. CERTIFICATION

17. Settling Defendant certifies that, to the best of his knowledge and belief, he has:
- a. fully complied with BLM's and EPA's Information Requests; and
 - b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information requested in the Information Request or otherwise relating to his potential liability regarding the Site after February 11, 2001.
 - c. submitted to the United States Financial Information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time Settling Defendants execute this Consent Decree.

VI. CIVIL PENALTIES

18. Settling Defendant consents to entry of a judgment awarding the United States a civil penalty in the amount of \$5,000 in settlement of the United States' penalty claim against Mr. Gresov in this action pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), which amount shall be due and owing by Mr. Gresov to the United States 60 days after entry of the Consent Decree.

19. Payment made pursuant to Paragraph 18 shall be rendered by FedWire Electronic Funds Transfer ("EFT") or by certified or cashier's check to the designated U.S. Department of Justice account, referencing USAO File Number _____ and DOJ Case Number 90-11-2-08357. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District

of Pennsylvania. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. At the time of payment, Defendant shall concurrently notify DOJ by telephone, facsimile and U.S. mail that payments have been made in accordance with Section X (Notices and Submissions).

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

20. Interest on Late Payments. In the event that any payments required by Section VI (Civil Penalties) are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment. If any payments required by Section VII, Paragraph 21 (Stipulated Penalties) are not received when due, Interest shall begin to accrue on the unpaid amount of the stipulated penalty and shall continue to accrue on the unpaid penalty through the date of payment.

21. Stipulated Penalties.

a. If any amounts due to the United States under this Consent Decree are not paid by the required date, the Defendants shall pay to the United States as a stipulated penalty, in addition to the Interest required by Paragraph 20, \$100 per each day that such payment is late for the first twenty days beyond the required date, plus \$200 per each day in excess of twenty days that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the United States. All payments to the United States under this Paragraph shall be made via EFT or certified or cashier's check in accordance with the instructions in Paragraph 19.

c. Penalties shall accrue as provided in this Paragraph regardless of whether the United States has notified the Defendant of the violation or noncompliance or has made a demand for

payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation or noncompliance occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the performance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

22. If the United States brings an action to enforce this Consent Decree, the Defendant shall reimburse the United States for all costs relating to such action, including but not limited to costs of attorney time. Each of the Parties shall otherwise bear its own costs and attorney fees in this action.

23. Payments made under Paragraphs 20-22 shall be in addition to any other remedies or sanctions available to the United States by virtue of the Defendant's failure to comply with any of the requirements of this Consent Decree.

24. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VIII. EFFECT OF SETTLEMENT

25. This Consent Decree resolves any claim by the United States against the Defendant for civil penalties for failure to comply with the Information Requests. Entry of this Consent Decree resolves the remaining issue of penalty amount in this action.

26. The United States shall have the right to reopen this Consent Decree or, if it deems it appropriate, to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint in this action if the United States obtains evidence that any information or representation of the Defendant in Section VIV (Certification) of this

Consent Decree is, in any material respect, false or inaccurate. That right shall be in addition to all other rights and causes of action, civil or criminal, the United States may have under law or equity in such event.

27. In any other administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, except in the event that this action is reopened pursuant to Paragraph 26, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States in such other proceeding were or should have been brought in the instant case.

IX. RESERVATIONS OF RIGHTS

28. This Consent Decree resolves only the claims expressly specified in Paragraph 25 above. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Defendant with respect to all other matters. Except as provided in Paragraph 25 of this Consent Decree, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate or pursue appropriate action, either judicial or administrative, under Sections 104, 106, or 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against the Defendant, or against any other person or entity not a party to this Consent Decree. This Consent Decree also does not apply, inter alia, to any claim(s) based upon the Defendant's failure to meet the requirements of this Consent Decree, or to any claim(s) based upon criminal liability.

29. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this

action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by the Defendant, or the financial certification made by Settling Defendant in Paragraph 17, is false or, in any material respect, inaccurate.

X. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States and BLM, respectively.

As to the United States:

Chief, Environmental Enforcement Section
ATTN: Deborah N. Behles, Esq.
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-08357
Phone: (202) 514-2463
Facsimile: (202) 616-6583

As to BLM (Department of the Interior):

John S. Retrum, Esq.
United States Department of the Interior
Office of the Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215
Phone: (303) 231-5353 ext. 227
Facsimile: (303) 231-5363

As to Mr. Gresov:

Mr. Gresov

768 College Avenue

Haverford, PA 19041

Phone: (610) 896-5097

XI. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of this Consent Decree.

XII. INTEGRATION/AMENDMENT

33. This Consent Decree constitutes the final, complete and integrated agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to this settlement other than those expressly contained in this Consent Decree. No amendment shall be made to this Consent Decree without written agreement of the Parties and approval by the Court.

XIII. SIGNATORIES/SERVICE

34. The undersigned representative of the Defendant and the Assistant Section Chief for the Regions 3 and 8 Group, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party for which he or she is signing to this document.

35. The Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its/his behalf with respect to all matters arising under or relating to this Consent Decree.

XIV. EFFECTIVE DATE

36. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by this Court.

SO ORDERED THIS 20th DAY OF December 2005.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Winston Gresov*, No. 05-1204 (E.D. Pa.) relating to the Mogul and Grand Mogul Mines located in San Juan County, Colorado.

FOR THE UNITED STATES OF AMERICA

Date: 12/13/05

ROBERT BROOK
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Date: 12/16/05

DEBORAH BEHLES
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-2463

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

SUSAN BRICKLIN
Assistant United States Attorney
Eastern District of Pennsylvania
United States Attorney's Office
615 Chestnut Street
Suite 1250
Philadelphia, PA
Albany, New York 19106
(215) 861 - 8200

OF COUNSEL:

JOHN S. RETRUM
United States Department of the Interior
Office of the Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Winston Gresov*, No. 05-1204 (E.D. Pa.) relating to the Mogul and Grand Mogul Mines located in San Juan County, Colorado.

FOR WINSTON GRESOV

Date: 12-14-05

Agent authorized to accept service on behalf of Winston Gresov

NONE

